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BENJAMIN MITCHELL, JR., : 08 Civ. 3783 (PKC) (JCF)
: :
Plaintiff, : REPORT AND
: RECOMMENDATION
- against - : :
: :
CITY OF NEW YORK, WARDEN ROBERT :
SHAW, G.R.V.C., :
: :
Defendants. :
-----: :
TO THE HONORABLE P. KEVIN CASTEL, U.S.D.J.:

The complaint in this action was filed on April 22, 2008, and service on the defendants was never effected. By letter dated October 15, 2008, I advised the plaintiff to submit within two weeks any reasons why the action should not be dismissed. When the plaintiff responded requesting an extension of time, I issued an order allowing him until December 12, 2008, but indicating that no further extensions would be permitted. (Memorandum Endorsement dated Nov. 6, 2008). In response to a further inquiry from the plaintiff, I reiterated that the December 12 date was final. (Memorandum Endorsement dated Nov. 19, 2008).

I am advised by the Pro Se Office of the Court that an amended summons and instructions for effecting service through the U.S. Marshals were delivered to the plaintiff by Federal Express on November 14, 2008. I am further advised that the United States Marshals Service has not received the necessary paperwork from the plaintiff since that time. Accordingly, service has not been effected.

I therefore recommend that the complaint be dismissed without

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prejudice pursuant to Rule 4(m) of the Federal Rules of Civil
Procedure. Pursuant to 28 U.S.C. § 636(b)(1) and Rules 72, 6(a),
and (d) of the Federal Rules of Civil Procedure, the parties shall
have ten (10) days to file written objections to this Report and
Recommendation. Such objections shall be filed with the Clerk of
the Court, with extra copies delivered to the chambers of the
Honorable P. Kevin Castel, Room 2260, and to the chambers of the
undersigned, Room 1960, 500 Pearl Street, New York, New York 10007.
Failure to file timely objections will preclude appellate review.

Respectfully submitted,


JAMES C. FRANCIS IV
UNITED STATES MAGISTRATE JUDGE

Dated: New York, New York
January 15, 2009

Copies mailed this date to:

Benjamin Mitchell, Jr.
07-A-5226
Upstate Correctional Facility
P.O. Box 2001
309 Bare Hill Road
Malone, New York 12953